

INTERNAL REVENUE SERVICE  
2 Cupania Circle  
Monterey Park, CA 91755

DEPARTMENT OF THE TREASURY  
Western Key District

CERTIFIED MAIL

Date: MAR 24 1998

Employer Identification Number:

Case Number:

Person to Contact:

Refer Reply To:

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code (Code).

FACTS:

The information submitted with your application, Form 1023, shows that you were formed as an association [REDACTED]. The purpose for which your organization was formed per your articles of association is "to actively preserve open space and the unique rural atmosphere of the neighborhood, maintain the agricultural and residential features, provide forums for local issues and prevent community deterioration. The boundaries of your organization are [REDACTED]."

ACTIVITY	TIME	REVENUE
board meetings	1%	1%
newsletter	1%	1%
member recruitment	1%	1%
neighborhood watch	1%	1%
admin work	1%	1%
(IRS bookkeeping, tracking membership, insurance, etc.),		
candidates' night	1%	1%
annual picnic	1%	1%
fundraisers	1%	1%
speakers at meetings	1%	1%
neighborhood preservation	1%	1%

Support for the organization is from dues. In the future, you plan to get donations from businesses in the area.

ISSUE: Does the organization qualify for exemption as an organization described in section 501(c)(3) of the Code?

LAW:

Section 501(c)(3) of the Code describes certain organizations exempt from income tax under Code section 501(a) and reads in part, as follows:

"(3) Corporations, and any community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statement), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (Regs) provides that in order to be exempt as an organization described in Code section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified, in such section. If an organization fails to meet either the organizational test or the operational test it is not exempt.



Regs. section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its governing document (a) limits the purposes of such organization to one or more exempt purposes and (b) does not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Regs. section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Code section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Regs. section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more purposes specified in Code section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals or the persons who created it.

Regs. section 1.501(c)(3)-1(d)(2) provides that the term "charitable" includes the advancement of education or science, and relief of the poor and distressed or of the underprivileged.

Revenue Ruling 67-391, 1967-2 C.B. 190, allowed exemption under section 501(c)(3) to a nonprofit organization formed to develop and distribute a community urban land-use plan.

Revenue Ruling 71-505, 1971-2 C.B. 232, denied exemption under Code section 501(c)(3) to a local city bar association that primarily directs its activities to the promotion and protection of the practice of law. The organization remained exempt under Code section 501(c)(6).

In Revenue Ruling 72-102, 1972-1 C.B. 149, a nonprofit organization formed to preserve the architecture and appearance of a housing development, and to own and maintain common green areas, streets and sidewalks for use of all the development residents qualifies for exemption under Code section 501(c)(4). However, contributions to the organization are not deductible.

Revenue Ruling 74-99, 1974-1 C.B. 131, explains that to qualify for exemption, a homeowners' association must serve a "community" which bears a reasonable recognizable relationship to

an area ordinarily identified as governmental. It must not conduct activities directed to the exterior maintenance of private residences, and the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

In Revenue Ruling 75-286, 1975-2 C.B. 210, a nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public area in the block, thereby benefiting the community as a whole as well as enhancing the value of its members' property rights will not qualify for exemption under Code section 501(c)(3), but may qualify under section 501(c)(4) of the Code.

Revenue Ruling 75-386, 1975-2 C.B. 211, allows exemption to a nonprofit organization that contracts with a private firm to provide the community with security patrols assisted by guard dogs, works to improve public services, housing, and residential parking, and that publishes a newspaper distributed free of charge to all community residents and sponsors a community basketball league, holiday programs, and meetings of community residents is operated exclusively for the promotion of social welfare and qualifies for exemption under section 501(c)(4) of the Code.

Revenue Ruling 76-204, 1976-1 C.B. 1512, allowed exemption under section 501(c)(3) of the Code to a nonprofit organization formed for the purpose of preserving the natural environment by acquiring, by gift or purchase, ecologically significant undeveloped land and either maintaining the land itself with limited public access or transferring the land to a government conservation agency by outright gift or being reimbursed by the agency for the cost.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 66 S. CT. 112, 90 L Ed. 67" the Supreme Court of the United States held that the presence of a single noneducational purpose, if substantial in nature, will destroy the educational purposes.

See Church of Boston v. Commissioner, (1978) 71 T.C. 102; Colorado State Chiropractic Society, (1989) 93 T.C. 487; Best Lock Corporation, (1959) 31 T.C. 1217; Louis Science Fiction Limited v. Commissioner, T.C. Memo 1985-162; and Minnesota Kingsmen Chess Association Inc. v. Commissioner, T.C. Memo 1983-495. All of these court cases held that the presence of a single non-exempt purpose and substantial non Code section 501(c)(3) activities result in loss of exemption despite the presence of other exempt purposes.

#### ANALYSIS AND CONCLUSION:

Your primary activities are the monthly newsletter, (■%);



which is distributed to all members. The newsletter informs your members of crime information, news in the area, and upcoming activities of your organization, administrative work, (█%), and board meetings, (█%). The rest of your time is devoted to activities such as neighborhood watch, (█%), neighborhood-preservation, (█%) annual picnic, (█%) candidates nights (█%), which may or may not be a Code section 501(c)(3) activity and speakers for your meetings, (█%). The percentage of time you submitted does not compute correctly. The numbers should equal 100%.

None of the above activities are described in section 501(c)(3) of the Code. The contents of the newsletter you submitted do not qualify as educational. The entire newsletter is devoted to the following topics (newsletter dated █):

- 1) Outdoor Watering Changes in █
- 2) Plan a BBQ for National Night Out - August 5th
- 3) In Memories
- 4) July 1st █ Change
- 5) █ To be Signed
- 6) Be Aware of Utility Rate Increase
- 7) Town Hall Meeting in Review
- 8) Community Calendar, Events of Interest to Our Neighborhood
- 9) Update From the █ Board

None of the above activities are educational within the meaning of Code section 501(c)(3). You do not meet the requirements of Revenue Ruling 67-391. In that Revenue Ruling the organization offered solutions in major urban problem areas, which include growth patterns, space utilization, population distribution and traffic control. The plan is designed to improve the area, eliminate existing blight and guard against future deterioration.

You do not meet the requirements of Revenue Ruling 76-204. The organization in that Revenue Ruling was formed by scientists, educators, conservationists and representatives from the community at-large for the purpose of preserving the natural environment. The ecologically significant undeveloped land consists of swamps, marshes, forests, wilderness tracts and other natural areas. Agriculture land and privately owned property are not considered ecologically significant.

To be considered for tax-exempt status under Code section 501(c)(3) an organization must be both organized and operated exclusively for one or more purposes described in that section.

Based on the information submitted, we have concluded that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Code, inasmuch

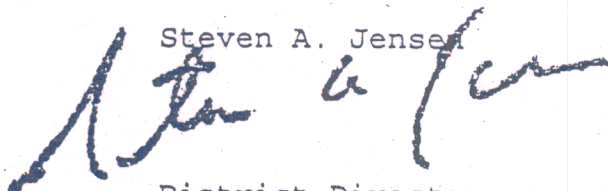
as you are not "operated exclusively" for any of the specified purposes within section 501(c)(3) of the Code, but may be operated "primarily" for social welfare purposes within the meaning of Code section 501(c)(4). You were offered exemption under this section of the code and refused.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange for a hearing. The hearing may be held at the office of Regional Director of Appeals, or if you request, at a mutually convenient District office.

If we do not hear from you within 30 days from the date of this letter, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you have any questions, please contact the person whose name appears on the heading of this letter.

Steven A. Jensen



District Director

ENCLOSURE(S):  
Publication 892  
Form 6018